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**Vogt Plumbing and Heating and Air Conditioning  
and Sheet Metal Workers Local 45**

**Vogt Plumbing and Heating and Air Conditioning  
and Plumbers and Steamfitters Local No. 33.**

Cases 18-CA-16982 and 18-CA-17155, 18-CA-17023, and 18-CA-17154

October 29, 2004

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND  
WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon charges and amended charges filed by Sheet Metal Workers Local 45 in Cases 18-CA-16982 and 18-CA-17155, and by Plumbers and Steamfitters Local No. 33 in Cases 18-CA-17023 and 18-CA-17154, the General Counsel issued the original consolidated complaint on December 24, 2003, an order further consolidating cases and an amended consolidated complaint on April 29, 2004, and an amendment thereto on June 1, 2004, against Vogt Plumbing and Heating and Air Conditioning, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act.

Thereafter, the Respondent and the Charging Parties entered into an informal settlement agreement, which was approved by the Regional Director on July 12, 2004. The settlement agreement required the Respondent to, among other things, (1) pay \$50,000 in backpay and (2) post a notice to employees regarding the complaint allegations.

The settlement agreement also provided that

Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the above captioned case(s), as well as any answer(s) filed in response.

On August 17, 2004, the Regional Director set aside the settlement agreement and reissued the consolidated complaint and notice of hearing on the ground that the Respondent had failed to comply with the terms of the settlement agreement, including by failing to pay the agreed-upon amount of backpay. On August 18, 2004, the Regional Director issued an amendment to the reissued consolidated complaint.

The reissued consolidated complaint provided that, pursuant to Sections 102.20 and 102.21 of the Board's

Rules and Regulations, the Respondent was required to file an answer to the reissued consolidated complaint within 14 days from service of it. In addition, the amendment to the reissued consolidated complaint provided that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent was required to file an answer to the amendment to the reissued consolidated complaint within 14 days from service of it. By letter dated September 2, 2004, counsel for the General Counsel advised the Respondent that unless it filed an answer by September 9, 2004, a motion for default judgment would be filed. The Respondent has not filed an answer to the reissued consolidated complaint or to the amendment to the reissued consolidated complaint.

On September 14, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On September 16, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the reissued consolidated complaint affirmatively stated that unless an answer was filed by August 31, 2004, all the allegations in the reissued consolidated complaint would be considered admitted. Further, the amendment to the reissued consolidated complaint affirmatively stated that unless an answer was filed by September 1, 2004, all the allegations in the amendment to the reissued consolidated complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated September 2, 2004, advised the Respondent that unless an answer was received by September 9, 2004, a motion for default judgment would be filed.

Under the terms of the settlement agreement, set forth above, the Respondent's answers filed to the original December 24, 2003 consolidated complaint, the April 29, 2004 order further consolidating cases, and the June 1, 2004 amendment thereto, were withdrawn when the Regional Director approved the settlement agreement on July 12, 2004. Consequently, as those answers no longer existed, the Respondent was obligated to file answers to the August 17, 2004 reissued consolidated complaint and the August 18, 2004 amendment to the reissued consoli-

dated complaint. As stated above, however, the Respondent has failed to file an answer to the reissued consolidated complaint or to the amended reissued consolidated complaint.

Accordingly, in the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent, a Iowa corporation, has been engaged as a contractor in plumbing and HVAC contract work at construction projects. During the 12-month period preceding the issuance of the reissued consolidated complaint, the Respondent, in conducting its business operations described above, purchased and received at its Oskaloosa, Iowa facility products, goods and services valued in excess of \$50,000 directly from points outside the State of Iowa. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Sheet Metal Workers Local 45 and Plumbers and Steamfitters Local No. 33 are labor organizations within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Jeff Danels	-	President/Owner
Rob Williams	-	Shop Manager
Mike Stewart	-	Project Manager

On about July 19, 2003, the Respondent, by Rob Williams, interrogated a job applicant regarding the applicant's feelings about a union and whether the applicant was at the shop to organize.

On about July 22, 2003, the Respondent, by Rob Williams, interrogated a job applicant during a job interview about whether the applicant was an active member of the Sheet Metal Workers Union.

In the same conversation on July 22, 2003, described above, Rob Williams threatened that he did not want the job applicant to organize or attempt to bring a union in.

In the same conversation on July 22, 2003, described above, Rob Williams required the job applicant to fill out a second application stating that the applicant would not organize for a union or work for another employer.

On about August 2, 2003, at the Respondent's Ottumwa High School jobsite in Ottumwa, Iowa, the Respondent, by Mike Stewart, interrogated an employee regarding the employee's conversation with a Plumbers and Steamfitters union organizer.

On about August 19, 2003, the Respondent, by Jeff Danels, interrogated an employee about another employee's feelings concerning the Plumbers and Steamfitters Union and the other employee's conversation with a Plumbers and Steamfitters union representative.

Sometime during the week of August 22, 2003, the Respondent, by Jeff Danels, created an impression of surveillance by threatening an employee that there was a union snitch in the shop who kept Danels informed about employee union activity.

On about August 21, 2003, at the Respondent's Ottumwa High School jobsite in Ottumwa, Iowa, the Respondent, by Mike Stewart, interrogated an employee about the subject matter of the employee's conversation with a Plumbers and Steamfitters union representative.

On about August 21, 2003, in a telephone conversation, the Respondent, by Jeff Danels, created an impression of surveillance by telling an employee that the Respondent knew the employee was working for the Union.

On about August 23, 2003, in a telephone conversation, the Respondent, by Mike Stewart, threatened an employee by calling the former employee derogatory names because the employee was involved in union activity.

On about December 23, 2003, the Respondent, by Jeff Danels, reported job applicants to the police department because they attempted to apply for work.

On about December 23, 2003, the Respondent, by Rob Williams, told job applicants that the Respondent was changing its hiring policy on the spot in order to discourage them from applying for work.

On about January 12, 2004, the Respondent, by Rob Williams, threatened job applicants it had filed a no-trespass order against them in order to discourage them from applying for work.

Through the above-described conduct and statements by Jeff Danels, Rob Williams, and Mike Stewart, the Respondent has interfered with, restrained and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

Since about July 15, 2003, and continuing to date, the Respondent has failed and refused to consider for employment Randy Brainard, Melvin Allman, Rueben Ross, Darrin Wood, Brad Prado, and Erwin Lopez.

Since about July 15, 2003, and continuing to date, the Respondent has failed and refused to hire Randy

Brainard, Melvin Allman, Rueben Ross, Darrin Wood, Brad Prado, and Erwin Lopez.

Since about July 15, 2003, and continuing to date, the Respondent has required applicants for employment to sign a two-page document titled "Important Authorizations and Understandings," which includes a provision prohibiting employees from holding employment with another employer and which states that the Respondent will retain applications as "active" for 30 days.

In about the week of July 21, 2003, the Respondent required employee Kevin Champion to complete a second job application stating that Champion agreed not to work for any other employer while employed by the Respondent.

On about August 21, 2003, the Respondent discharged employees Kevin Champion and Owen Ruch.

On about December 23, 2003, the Respondent changed its hiring policies to, among other things, refuse to provide applications and to refuse to see applicants without an appointment.

Since about December 23, 2003, and continuing to date, the Respondent has failed and refused to consider for employment Shane Benson and Joe Drake.

Since about December 23, 2003, and continuing to date, the Respondent has failed and refused to hire Shane Benson and Joe Drake.

Beginning on July 19, 2003, the Respondent had openings for, and hired, at least six journeymen plumbers. The six journeymen plumbers known to be hired were hired as follows: one on July 19, one on August 22, and one on September 29, all in 2003, and one on January 29, and two on February 19, all in 2004.

Beginning on December 23, 2003, Respondent had openings for, and hired, at least two sheet metal workers. The two sheet metal workers known to be hired were hired in or about January 2004.

The applicants for employment described above had the experience and training relevant to the openings described above.

The Respondent changed its hiring practices, failed and refused to consider for hire or to hire Brainard, Allman, Ross, Wood, Prado, Lopez, Benson and Drake, and discharged Champion and Ruch because the above-named employees joined and assisted a union and engaged in concerted activities, and to discourage employees from engaging in these activities.

#### CONCLUSIONS OF LAW

1. By the conduct and statements by Jeff Danels, Rob Williams, and Mike Stewart described above, the Respondent has interfered with, restrained and coerced employees in the exercise of the rights guaranteed them by

Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By changing its hiring practices, by failing and refusing to consider for hire or hire Brainard, Allman, Ross, Wood, Prado, Lopez, Benson and Drake, and by discharging Champion and Ruch, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by failing and refusing to consider for hire and hire Randy Brainard, Melvin Allman, Rueben Ross, Darrin Wood, Brad Prado, Erwin Lopez, Shane Benson, and Joe Drake, we shall order the Respondent to offer them reinstatement to the positions for which they sought to apply, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.<sup>1</sup> We shall further order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(3) and (1) by discharging Kevin Champion and Owen Ruch, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, *supra*, with interest as prescribed in *New Horizons for the Retarded*, *supra*.

The Respondent shall also be required to remove from its files all references to the unlawful failure and refusal to consider for hire or hire Randy Brainard, Melvin

<sup>1</sup> See *FES*, 331 NLRB 9 (2000), supplemental decision 333 NLRB 66 (2001), *enfd.* 301 F.3d 83 (3d Cir. 2002).

Allman, Rueben Ross, Darrin Wood, Brad Prado, Erwin Lopez, Shane Benson, and Joe Drake, and all references to the unlawful discharges of Kevin Champion and Owen Ruch, and to notify them in writing that this has been done and that the unlawful conduct will not be used against them in any way.

Further, having found that the Respondent violated Section 8(a)(3) and (1) by changing its hiring practices by, among other things, refusing to provide applications or to see applicants without an appointment; requiring applicants to sign a document titled "Important Authorizations and Understandings," which includes a provision prohibiting employees from holding employment with another employer; changing the period in which applications are considered "active" to 30 days; and requiring employees to fill out a second application stating that they agree not to work for any other employer while employed by the Respondent, we shall order the Respondent to rescind these changes.

#### ORDER

The National Labor Relations Board orders that the Respondent, Vogt Plumbing and Heating and Air Conditioning, Oskaloosa, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees or job applicants about their own or others' union membership, activities, or sympathies.

(b) Creating the impression among its employees that their union activities are under surveillance.

(c) Stating or implying that job applicants who have union affiliations or who intend to organize the Respondent's employees will not be hired.

(d) Requiring job applicants to fill out an application stating that they will not attempt to organize the Respondent's employees or work for another employer while employed by the Respondent.

(e) Stating or implying that it is changing its hiring practices in order to discourage union affiliated applicants from applying for work.

(f) Reporting job applicants to the police department because of their union affiliation.

(g) Stating or implying that it has filed a no-trespass order against job applicants because of their union affiliation.

(h) Threatening employees with unspecified reprisals because they joined or assisted a union or engaged in concerted activities.

(i) Failing and refusing to consider for hire or hire job applicants on the basis of their union affiliation or based on the Respondent's belief that they may engage in organizing activity once they are hired.

(j) Discharging, or otherwise discriminating against employees, because they joined or assisted a union or engaged in concerted activities or to discourage employees from engaging in these activities.

(k) Changing its hiring practices in order to discourage union affiliated applicants from applying for work and to discourage employees from engaging in union or concerted activities.

(l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Randy Brainard, Melvin Allman, Rueben Ross, Darrin Wood, Brad Prado, Erwin Lopez, Shane Benson, and Joe Drake reinstatement to the positions for which they sought to apply or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.

(b) Make Randy Brainard, Melvin Allman, Rueben Ross, Darrin Wood, Brad Prado, Erwin Lopez, Shane Benson, and Joe Drake whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, offer Kevin Champion and Owen Ruch full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

(d) Make Kevin Champion and Owen Ruch whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this Decision.

(e) Within 14 days from the date of this Order, remove from its files all references to the unlawful refusal to consider for hire or hire Randy Brainard, Melvin Allman, Rueben Ross, Darrin Wood, Brad Prado, Erwin Lopez, Shane Benson, and Joe Drake, and all the references to the unlawful discharges of Kevin Champion and Owen Ruch, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful conduct will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel re-

cords and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Rescind the modifications made to its hiring practices on or about July 15, 2003, July 21, 2003, and December 23, 2003.

(h) Within 14 days after service by the Region, post at its facility in Oskaloosa, Iowa, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 15, 2003.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 29, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
APPENDIX  
NOTICE TO EMPLOYEES  
Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees or job applicants about their own or others' union membership, activities, or sympathies.

WE WILL NOT create the impression that our employees' union activities are under surveillance.

WE WILL NOT state or imply that job applicants who have union affiliations or who intend to organize our employees will not be hired.

WE WILL NOT require job applicants to fill out an application stating that they will not attempt to organize our employees or work for another employer while employed by us.

WE WILL NOT state or imply that we are changing our hiring practices in order to discourage union affiliated applicants from applying for work.

WE WILL NOT report job applicants to the police department because of their union affiliation.

WE WILL NOT state or imply that we have filed a no-trespass order against job applicants because of their union affiliation.

WE WILL NOT threaten you with unspecified reprisals because you join or assist a union or engage in concerted activities.

WE WILL NOT fail or refuse to consider for hire or hire job applicants on the basis of their union affiliation or based on our belief that they may engage in organizing activity once they are hired.

WE WILL NOT discharge, or otherwise discriminate against you because you join or assist a union or engage in concerted activities or to discourage you from engaging in these activities.

WE WILL NOT change our hiring practices in order to discourage union affiliated applicants from applying for work and to discourage employees from engaging in union or concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Randy Brainard, Melvin Allman, Rueben

Ross, Darrin Wood, Brad Prado, Erwin Lopez, Shane Benson, and Joe Drake instatement to the positions for which they sought to apply or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.

WE WILL make Randy Brainard, Melvin Allman, Rueben Ross, Darrin Wood, Brad Prado, Erwin Lopez, Shane Benson, and Joe Drake whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, offer Kevin Champion and Owen Ruch full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make Kevin Champion and Owen Ruch whole for any loss of earnings and other benefits suffered

as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful refusal to consider for hire or hire Randy Brainard, Melvin Allman, Rueben Ross, Darrin Wood, Brad Prado, Erwin Lopez, Shane Benson, and Joe Drake, and all references to the unlawful discharges of Kevin Champion and Owen Ruch, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that our unlawful conduct will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, rescind the modifications made to our hiring practices on or about July 15, 2003, July 21, 2003, and December 23, 2003.

VOGT PLUMBING AND HEATING AND AIR CONDITIONING